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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

No. 281

ROBERT KLEIN,

*Petitioner,*

*vs.*

DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS AND NOBLE J. PUFFER, DIRECTOR OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

MAYER GOLDBERG,
33 North La Salle Street,
Chicago, Illinois,
*Counsel for Petitioner.*

ALECK L. BERNSTEIN,
39 S. La Salle Street,
Chicago, Illinois,
JOSEPH MINSKY,
33 N. La Salle Street,
Chicago, Illinois,
*Of Counsel.*

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ROBERT KLEIN,

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DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS AND NOBLE J. PUFFER, DIRECTOR OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Petitioner Robert Klein prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above entitled cause on May 19, 1952.

### OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported in 412 Ill. 75. (R. 22.)

### JURISDICTION.

The opinion of the Supreme Court of Illinois was filed on March 20, 1952. (R. 22.) Petition for Rehearing was denied on May 19, 1952. (R. 33, 34.) The jurisdiction of the United States Supreme Court is invoked under Title 28 U. S. Code, Sec. 1257(3).

Petitioner raised Federal Constitutional questions in his complaint filed in the Superior Court of Cook County, Illinois. Petitioner alleged that Sections 11, 13(k), 13(l), 13(m), 13(n) and 13(r) of the Illinois Optometric Practice Act (Vol. II, Ill. Bar Stats. 1951, Chap. 91, Sec. 105.1 to 105.29) violated petitioner's rights under the Fourteenth Amendment to the Federal Constitution. (R. 7.) Respondents filed a motion to strike and dismiss the complaint. (R. 14.)

Upon hearing argument of counsel, the trial court found that the challenged sections of the statute were invalid on the specific ground that they violated petitioner's rights under the Fourteenth Amendment of the United States Constitution. Respondents having elected to stand upon their motion to dismiss, enforcement of the statute was permanently enjoined. (R. 16, 17.)

Direct appeal was taken by the respondents to the Supreme Court of Illinois. (Ill. Bar Stats. 1951, Vol. II, Chap. 110, Par. 199.) The Supreme Court of Illinois filed its opinion on March 20, 1952. (412 Ill. 75.) The Supreme Court of Illinois specifically held that the statute did not violate petitioner's Federal constitutional rights as argued. The Court specifically held that Section 11 of the statute which required petitioner to display his certificate in a conspicuous place but not in such manner that it could be seen from outside his office and that required petitioner to keep certain records for three years was not unreasonable or arbitrary and did not deny petitioner due process of law under the Federal Constitution. (412 Ill. 75 at pages 80 and 81.) The Illinois Supreme Court further held that sections 13(k), 13(l), 13(m) and 13(n) of the statute, providing detailed regulation of advertising by optometrists, did not constitute an arbitrary interference with petitioner's rights and did not deny petitioner due process of law

under the Federal Constitution. (412 Ill. 75 at pages 82 to 84.)

The Supreme Court of Illinois further specifically held that section 13(r) of the statute did not violate petitioner's right to due process of law. Petitioner had urged that this section of the statute was vague and uncertain and therefore violated petitioner's Federal right to due process of law. (412 Ill. 75 at page 85.) Sections 25 and 26 of the Illinois Optometric Practice Act are criminal in nature and provide for fine and imprisonment in event of violation of any section of the Act. The Supreme Court of Illinois agreed that Section 13(r) of the statute as enacted by the Legislature of Illinois was vague and indefinite and did not "describe the relationships forbidden with the definiteness and certainty that is required so that those to whom the provision applies may know their rights and duties." (412 Ill. 75 at page 86.) The Supreme Court of Illinois, however, expunged certain words from the statute as surplusage and thereupon arrived at the conclusion that the entire statute was valid.

Petitioner's Petition for Rehearing again urged that the assailed sections of the statute violated petitioner's rights under the Fourteenth Amendment of the Federal Constitution. This Petition for Rehearing was denied by the Supreme Court of Illinois on May 19, 1952. (R. 33, 34.)

## QUESTIONS PRESENTED.

This petition seeks to present constitutionality of Sections 11, 13(k), 13(l), 13(m), 13(n) and 13(r) of the Illinois Optometric Practice Act of 1951 under Amendment XIV of the Constitution of the United States.

## STATUTE INVOLVED.

**The statute involved in this petition is the Illinois Optometric Practice Act of 1951 appearing in Volume II of Illinois Revised Statutes 1951, Chap. 91, Sec. 105.1 to 105.29. This entire statute is set forth in Appendix "A".**

## STATEMENT OF THE CASE.

Petitioner, a duly licensed and practicing optometrist in Chicago, Illinois, filed a complaint in chancery in the Superior Court of Cook County, Illinois. Petitioner alleged that certain sections of the Illinois Optometric Practice Act of 1951 violated his right to due process of law under the Constitution of the United States. Petitioner sought an injunction restraining the Department of Registration and Education of the State of Illinois and the Director thereof from enforcing these sections of the Act. (R. 1 to 13.)

Respondents filed a motion to strike the complaint and dismiss the suit on the ground that the assailed sections of the statute did not violate petitioner's constitutional rights. (R. 14.) Upon hearing argument of counsel, the Superior Court of Cook County found that the complaint was sufficient and that the sections of the statute in question contravened petitioner's Federal rights as alleged. Respondents elected to stand on their motion to dismiss. On July 10, 1951, the court entered a decree permanently enjoining enforcement of the sections in question on the specific ground that they violated petitioner's rights under the Constitution of Illinois and the United States Constitution. (R. 16, 17.)

On direct appeal by respondents, the Supreme Court of Illinois reversed this decree and held in favor of the validity of the assailed statute. (412 Ill. 75.)

## SPECIFICATION OF ERRORS TO BE URGED.

It is respectfully submitted that the Supreme Court of Illinois erred:

1. In holding that Section 11 of the Illinois Optometric Practice Act of 1951 (Volume II, Illinois State Bar Statutes 1951, Chapter 91, Sec. 105.11) did not violate the rights of petitioner under Amendment XIV of the Constitution of the United States.

2. In holding that Sections 13(k), 13(l), 13(m) and 13(n) of said Illinois Optometric Practice Act of 1951 did not violate the rights of petitioner under Amendment XIV of the Constitution of the United States.

3. In holding that Section 13(r) of said Illinois Optometric Practice Act of 1951 did not violate the rights of petitioner under Amendment XIV of the Constitution of the United States.

4. In holding that Sections 11, 13(k), 13(l), 13(m), 13(n) and 13(r) of the Illinois Optometric Practice Act of 1951, enacted by the Legislature of Illinois, are valid and do not violate petitioner's right to due process of law under the Federal Constitution.

5. In reversing the decree of permanent injunction entered by the Superior Court of Cook County restraining enforcement of Sections 11, 13(k), 13(l), 13(m), 13(n) and 13(r) of the Illinois Optometric Practice Act on the ground that said portions of said statute violate Amendment XIV of the Constitution of the United States.

## REASONS FOR GRANTING THE WRIT.

The issues presented by this petition are substantial and vital not only to petitioner as an individual but also to each of the 17,000 practicing optometrists in the United States and to the vast number of American people who depend upon the optometrist for proper care and correction of their eyesight. The questions are as follows:

1. Section 11 of the Illinois Optometric Practice Act requires the holder of a certificate of registration to display it in a conspicuous place in his office but not in such manner that it may be seen from outside such office. This section also requires that the optometrist shall keep a record of examinations made and prescriptions issued "which record shall include the names of persons examined and for whom prescriptions were prepared". This record is to be preserved for three years "in the office in which such professional service was rendered". These requirements are purely arbitrary, unreasonable and unnecessary. They have no relation to public health or welfare or the maintenance of high standards of optometric care.

The Supreme Court of Illinois held that section 11 is a reasonable regulation because "reference to previous treatment and prescription would insure more comprehensive and intelligent treatment". (412 Ill, 75 at page 81.) This idea is fallacious. The statute requires only that the names of persons examined be included in the record. No information as to treatment or prescription is required. The provision that the record be retained "in the office in which such professional service was rendered" is similarly unnecessary, unreasonable and arbitrary and has no relation to public health or welfare.

As stated by the Supreme Court of Illinois, every citizen has the inalienable right to engage in his legitimate business or profession and this right is bulwarked by the due process clause of the Federal Constitution. (412 Ill. 75 at page 78.) The United States Supreme Court has always held that the police power of the state may be exerted in the public welfare but that use of the power is subject to the constitutional limitation that it may not be exercised arbitrarily or unreasonably. Some of the many decisions of this Court which illustrate this principle are:

*Jay Burns Baking Co.* v. *Bryan,* 264 U. S. 504; 44 S. Ct. 412; 68 L. Ed. 813.

*Nashville Railway* v. *Walters,* 294 U. S. 405; 55 S. Ct. 486; 79 L. Ed. 949.

*Liggett Co.* v. *Baldridge,* 278 U. S. 105; 49 S. Ct. 57; 73 L. Ed. 204.

*Eubank* v. *City of Richmond,* 226 U. S. 137; 33 S. Ct. 76; 57 L. Ed. 156.

In the case of *Liggett Co.* v. *Baldridge,* 278 U. S. 105; 49 S. Ct. 57; 73 L. Ed. 204, this Court held (49 S. Ct. at page 59):

> "A state cannot, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them."

2. Petitioner draws into question on Federal constitutional grounds the provisions of section 13(k) which forbid display at street level of the name of the optometrist in lettering more than four inches in height or larger than seven inches in height when above street level and which forbid display by neon signs, eye glasses or spectacles; section 13(l) which forbids advertising in a directory "by display or type that is substantially dissimilar in size, shape or color to that used for other practitioners of the

healing arts in the same directory"; section 13(m) which forbids display of ophthalmic material or instruments "where the display of such merchandise, material or advertising would be visible from the street"; and section 13(n) which forbids display of the certificate or diploma in a manner visible from the street. Each of these provisions of the statute is unreasonable and arbitrary. None of these provisions have any relation to the public health or welfare or to maintenance of proper optometric care. The decisions of this Court cited above apply to these portions of the statute and demonstrate that they constitute an arbitrary interference with the rights of petitioner and all others similarly situated and a denial of due process of law under the Federal Constitution.

These regulatory provisions of the statute impose upon optometry standards as exacting as medicine or dentistry. But, Section 4 of the Act expressly provides that a firm or corporation may engage the services of a registered optometrist. The result is a completely anomalous inconsistency.

In addition, Section 13(l), which forbids advertising substantially dissimilar from that of other practitioners in the same directory, is so vague, indefinite and uncertain that those affected thereby cannot possibly ascertain their rights or duties thereunder. Numerous decisions of this Court have applied the "void for vagueness" doctrine to a statute of this type. This statute subjects petitioner and all other optometrists to revocation of their licenses, to deprivation of their right to earn a livelihood and to possible fine and imprisonment without clearly and definitely advising them how they may avoid these consequences by compliance. A reference to the following decisions of this Court demonstrates the inherent vice in this section of the statute:

*Jordan* v. *DeGeorge*, 341 U. S. 223; 71 S. Ct. 703; 95 L. Ed. 886.

*Winters* v. *New York*, 333 U. S. 507; 68 S. Ct. 665; 92 L. Ed. 840.

*Connally* v. *General Construction Co.*, 269 U. S. 385; 46 S. Ct. 126; 70 L. Ed. 322.

*International Harvester* v. *Kentucky*, 234 U. S. 216; 34 S. Ct. 853; 58 L. Ed. 1284.

*Collins* v. *Kentucky*, 234 U. S. 634; 34 S. Ct. 924; 58 L. Ed. 1510.

In the case of *Jordan* v. *DeGeorge*, 341 U. S. 223; 71 S. Ct. 70; 95 L. Ed. 886, this Court held (71 S. Ct. 703 at page 707):

> "The essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct. *Williams* v. *United States*, 341 U. S. 97, 71 S. Ct. 576, decided April 23, 1951; *Screws* v. *United States*, 1945, 325 U. S. 91, 103-104, 65 S. Ct. 1031, 1036, 89 L. Ed. 1495. This Court has repeatedly stated that criminal statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law. *Lanzetta* v. *State of New Jersey*, 1939, 306 U. S. 451, 59 S. Ct. 618, 83 L. Ed. 888; *United States* v. *L. Cohen Grocery Co.*, 1921, 255 U. S. 81, 41 S. Ct. 298, 65 L. Ed. 516."

In the case of *Connally* v. *General Construction Co.*, 269 U. S. 385; 46 S. Ct. 126; 70 L. Ed. 322, this Court held (46 S. Ct. 126 at page 127):

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due

process of law. *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 221, 34 S. Ct. 853, 58 L. Ed. 1284; *Collins* v. *Kentucky*, 234 U. S. 634, 638, 34 S. Ct. 924, 58 L. Ed. 1510."

3. Section 13(r) of the statute provides for revocation of the certificate for:

> "The performance of optometric service in conjunction with a scheme or plan with another person, firm or corporation known to be advertising in a manner contrary to the provisions of this Act or otherwise violating the laws of the State of Illinois concerning the practice of optometry."

As set forth by the Supreme Court of Illinois, petitioner questioned this section of the statute on the ground that it was vague and uncertain and that it therefore violated petitioner's right to due process of law. (412 Ill. 75 at page 85.) The Supreme Court of Illinois also found that the particular words "scheme or plan" do not describe the forbidden relationships with such definiteness and certainty that those affected thereby might know their rights and duties. (412 Ill. 75, 86.) The Supreme Court of Illinois thus conceded that the statute as enacted by the Legislature of Illinois was void for vagueness and that it denied petitioner due process of law. The decisions of this Court cited in paragraph 2 above require this result. But, the Supreme Court of Illinois decided to treat the words "scheme or plan" as surplusage. In effect the Court thus amended the statute and declared the resulting law valid. (412 Ill. 75 at page 86.) In this manner, the Supreme Court of Illinois has denied petitioner his right to due process of law under Amendment XIV of the United States Constitution.

The United States Supreme Court has always held that the purpose of a statute is expressed in the words thereof and that the function of the Court in construing a statute

is "to ascertain—neither to add nor to subtract, neither to delete nor to distort." (*62 Cases, etc.* v. *United States*, 340 U. S. 593; 71 S. Ct. 515 at page 518; 95 L. Ed. 566.)

Many other decisions of this Court adhere to this maxim of statutory construction (*Platt* v. *Union Pacific Railroad*, 99 U. S. 548; 25 L. Ed. 424; *Petition of Public Bank of New York*, 278 U. S. 101, 49 S. Ct. 43, 77 L. Ed. 202 and *Washington Market Co.* v. *Hoffman*, 101 U. S. 112, 115; 25 L. Ed. 782).

Furthermore, the excision practiced by the Supreme Court of Illinois leaves the statute as vague and as vicious as it was before the operation, or even more so. Section 4 of the Act adds to the confusion because it specifically provides that persons, firms and corporations who manufacture or deal in spectacles are exempt from the provisions of the Act and may engage the services of a registered optometrist. But, despite this language, petitioner must determine at his peril whether the firm with which he is associated is "known to be advertising in a manner contrary to the provisions" of the statute. Petitioner may be fined or imprisoned if he guesses wrongly as to whether his associate is "otherwise violating the laws of the State of Illinois concerning the practice of optometry" even though Section 4 of the Act expressly exempts such associte from the operation thereof. The statute as emasculated still retains the inherent disability of criminally punishing petitioner for the misdeeds of others who are beyond petitioner's control. This section of the Act is indeed a classic denial of due process of law.

4. In our briefs filed in the Supreme Court of Illinois, we contended that the practice of optometry is not a learned profession giving rise to a confidential relationship but that optometry is a skilled calling or vocation or a limited statutory profession. In this regard, we cited the

decision of the United States Court of Appeals for the District of Columbia in the case of *Silver* v. *Lansburgh*, 111 F. 2d 518. The Supreme Court of Illinois held that it was unnecessary to determine the status of optometry in order to pass upon the validity of the challenged statute. (412 Ill. 75 at page 79.) However, the result reached by the Supreme Court of Illinois has approved regulation of optometry of a type wholly unnecessary in connection with a skilled calling or vocation. In effect, therefore, the Illinois Supreme Court has taken a position directly contrary to the decision of the Court of Appeals of the District of Columbia.

5. We stress the extreme importance of review of this case not only for the benefit of all optometrists but for all people who use optometry for care of their eyesight. As we pointed out in our briefs before the Supreme Court of Illinois, on July 19, 1950, Dr. Joseph W. Babcock, Vice-President of the American Optometric Association, in a statement made before a sub-committee of the United States House of Representatives, stated that there were 2,600 ophthalmologists in the United States but 17,000 practicing optometrists and that seven out of ten persons in the United States who require eye examination use the optometrist. The type of stringent and unnecessary regulation imposed by the statute in question will increase the cost of eye examination because it will compel an increase in the charges made by optometrists by reducing the volume of their business. This type of arbitrary regulation has no connection of any kind with public health or welfare. In our brief we also showed that similar statutes were vetoed by the Governors of New York and of Illinois during 1939 for the express reason that this type of regulation would force payment of higher prices for proper care of the eyes. Unreasonable and arbitrary regulation will tend to make proper care unobtainable for a large

portion of the population. On the contrary, reasonable and truthful advertising will help to induce proper examination and care of the eye.

## CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

MAYER GOLDBERG,
*Counsel for Petitioner,*
33 North La Salle Street,
Chicago 2, Illinois.

ALECK L. BERNSTEIN,
39 S. La Salle Street,
Chicago, Illinois,
JOSEPH MINSKY,
33 N. La Salle Street,
Chicago, Illinois,
*Of Counsel.*

# THE ILLINOIS
# OPTOMETRIC PRACTICE ACT

STATE OF ILLINOIS

ADLAI E. STEVENSON

Governor

DEPARTMENT OF

REGISTRATION AND EDUCATION

SPRINGFIELD

1951

(Printed by authority of the State of Illinois)

# THE ILLINOIS OPTOMETRIC PRACTICE ACT

Sec.


1. Optometry—Certificate of Registration.
2. Practice of Optometry—Public interest.
3. Practice of Optometry—What constitutes.
4. Exemptions from operation of Act.
5. Certificate of Registration—Professional designation.
6. Powers and duties of Department.
7. Certificate of Registration—qualification—examination.
8. Application for certificate.
9. Who shall hold examinations.
10. When certificate shall issue.
11. Certificate to be displayed.
12. Renewal of certificate of registration—Expiration—Restoration—Persons in military or naval service.
13. Refusal, revocation or suspension of certificate—Grounds—Notice, hearing and continuance.
14. Hearing—Subpoena.
15. Court may compel testimony.
16. Record of proceedings.
17. Report of committee—Rehearing.
18. Restoration of certificate.
19. Review of administrative decisions.
20. Order of revocation—prima facie evidence.
21. Appeal to Supreme Court.
22. Reciprocity.
23. Fees.
24. Injunctive relief.
25. Offenses—Penalty.
26. Unspecified violations—Penalty.
27. Record—Public inspection—contents.
28. Short title.
29. Repeal.

AN ACT in relation to the regulation of the practice of optometry, and to repeal an Act therein named. (Approved June 15, 1951)

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. No person shall practice or attempt to practice optometry, as defined in this Act, without a valid, existing certificate of registration as a registered optometrist issued by the Department of Registration and Education.

Sec. 2. The practice of optometry in the State of Illinois is declared to affect the public health, safety and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of optometry, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to practice optometry in the State of Illinois. This Act shall be liberally construed to carry out these objects and purposes.

Sec. 3. The practice of optometry is defined to be the employment of objective or subjective means, or both, for the examination of the human eye and its appendages, without the use of drugs, medicine, or surgery, for the purpose of ascertaining any departure from the normal, measuring its powers of vision, and adapting lenses or prisms, ocular exercises, visual training, or any other method other than the use of drugs, medicine, or surgery, for the aid thereof. A person shall be deemed to be practicing optometry within the meaning of this Act who in any way advertises himself to be an optometrist, or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses or prisms for the aid

thereof, or who shall practice or offer or attempt to practice optometry, as herein defined, either on his own behalf or as the employee of a person, firm, or corporation, whether under the supervision of his employer or not, or who shall use testing appliances for the purpose of measurement of the powers of vision or diagnose any ocular deficiency or deformity, visual or muscular anomaly of the human eye or prescribe lenses, prisms, or ocular exercise for the correction or relief thereof, or who holds himself out as qualified to practice optometry. Nothing in this section shall be interpreted to prevent a person from acting as an assistant under the direct supervision of a person licensed by the State of Illinois to practice optometry or medicine and surgery, or to prohibit visual screening programs conducted by charitable organizations acting in the public welfare under the supervision of a committee composed of persons licensed by the State of Illinois to practice optometry and persons licensed by the State of Illinois to practice medicine and surgery.

Sec. 4. Nothing contained in this Act shall be construed to apply to persons authorized under the laws of the State of Illinois to practice medicine and surgery, nor persons, firms and corporations who manufacture or deal in eye glasses or spectacles in a store, shop or other permanently established place of business, and who neither practice nor attempt to practice optometry. Nothing contained herein shall prevent any such person, firm, or corporation from engaging the services of registered optometrists.

Sec. 5. Every person to whom a valid existing certificate of registration as a registered optometrist has been issued under this Act, shall be designated professionally as an "optometrist" and not otherwise, and any such

registered optometrist may, in connection with the practice of his profession, use the title or designation of "optometrist", and, if entitled by degree from a college or university recognized by the Department of Registration and Education, may use the title of "Doctor of Optometry", or the abbreviation "O.D."; but when the name of such registered optometrist is used professionally in oral, written, or printed announcements, prescriptions, professional cards or publications for the information of the public, and is preceded by the title "Doctor" or the abbreviation "Dr.", the explanatory designation of "optometrist", "optometry", or "Doctor of Optometry" shall be added immediately following such title and name, and when such announcement, prescription, professional card or publication is in writing or in print, such explanatory addition shall be in writing, type, or print not less than one-half the size of that used in said name and title. No person other than the holder of a valid existing certificate of registration under this Act shall use the title and designation of "Doctor of Optometry", "O.D.", or "optometrist", either directly or indirectly in connection with his profession or business.

Sec. 6. The Department of Registration and Education shall exercise, subject to the provisions of this Act, the following functions, powers, and duties:

(a) Conduct examinations to ascertain the qualifications and fitness of applicants for certificates of registration as registered optometrists and pass upon the qualifications of applicants for reciprocal licenses, certificates and authorities.

(b) Prescribe rules and regulations for a method of examination of applicants.

(c) Prescribe rules and regulations defining what shall constitute a school, college, or university, or department of a university, or

other institution, reputable and in good standing, and to determine the reputability and good standing of a school, college or other institution by reference to a compliance with such rules and regulations; however, no school, college or university, or department of a university, or other institution that refuses admittance to applicants, solely on account of race, color or creed shall be considered reputable and in good standing.

(d) Establish a standard of preliminary education deemed requisite to admission to a school, college or university, and to require satisfactory proof of the enforcement of such standard by said schools, colleges and universities.

(e) Conduct hearings on proceedings to revoke or to refuse renewal of licenses, certificates or authorities of persons applying for registration or registered under the provisions of this Act and to revoke or refuse to renew such licenses or certificates or authorities.

(f) Formulate rules and regulations to administer the provisions of this Act.

None of the foregoing functions, powers, or duties enumerated shall be exercised by the Department of Registration and Education except upon the action and report in writing of the Examining Committee which shall be composed of five persons designated from time to time by the Director of Registration and Education to take such action and to make such report for the profession involved herein. Such persons shall be chosen from among such practicing optometrists of the State of Illinois as have had not less than ten years experience as practicing optometrists, no one of whom is a member of any optometric school or college or instructor in optometry or person connected in any way therewith, or is a manufacturer, jobber, or jobbing representative of ophthalmic equipment, materials or supplies.

The action or report in writing of a majority of the Committee designated shall be sufficient authority upon which the Director of Registration and Education may act. In designating the persons to act, the Director of Registration and Education shall give due consideration to recommendations by members of the profession of optometry and by organizations therein. Whenever the Director is satisfied that substantial justice has not been done in an examination, he may order a re-examination by the same or other examiners.

Sec. 7. A person is qualified to apply for a certificate of registration as a registered optometrist:

(a) Who is at least 21 years of age;

(b) Who is of good moral character and temperate habits;

(c) Who has graduated from high school or secondary school approved by the Department of Registration and Education, or who has completed an equivalent course of study, as determined by an examination conducted by the Department of Registration and Education; or who has earned 15 units of credit by passing the entrance examination for admission to an accredited college or university;

(d) Who is free from contagious or infectious diseases;

(e) Who (1) has attended an accredited college of liberal arts and sciences or an accredited college or school or department of optometry as a regularly enrolled student for a period of at least one year and whose credits from any such institution shall include any three of the following subjects: Chemistry, one year; Physics, one year; Mathematics, one year; Zoology or Biology, one year; and English, one year; and who shall, in addition to the foregoing, subsequently attend and satisfactorily complete three years of study in an

accredited college, school or department of optometry; and who has received a certificate of graduation from such college, school or department of optometry; or

(2) has attended and satisfactorily completed four years of study in an accredited University, and attended and satisfactorily completed its department or college of optometry; or

(3) has graduated before July 1, 1945, from a school of optometry which, at the time of his graduation, stood approved by the Department of Registration and Education; or

(4) was, prior to July 1, 1946, a student in good faith in a school of optometry which, at the time of his attendance, stood approved by the Department of Registration and Education, and has graduated from that school completing a course of study of not less than two thousand clock hours, distributed over two school years of eight months duration each; or

(5) has graduated from an approved school of optometry.

No college, school or department of optometry shall be approved or accredited by the Department of Registration and Education unless it has a minimum requirement of a course of study of three academic years. For the purposes of this Act, an academic year shall be understood to mean a course of study comprising not less than thirty calendar weeks and leading to credit of not less than thirty hours or the equivalent in quarter hours or term credits. A semester hour shall be evaluated as signifying at least one attendance hour each week in lectures, quizzes, or recitations for an entire semester of at least fifteen calendar weeks, or as signifying at least two attendance hours each week for an entire semester of at least fifteen calendar weeks in laboratories or clinics.

(f) Who is a citizen of the United States.

Sec. 8. Whoever desires to obtain a certificate of registration shall apply therefor to the Department of Registration and Education, in writing, on blanks prepared and furnished by the Department of Registration and Education. Each application shall contain proof of the particular qualifications required of the applicant, shall be verified by the applicant under oath, and shall be accompanied by the required fee.

Sec. 9. The Department of Registration and Education shall hold examinations of applicants for certificates of registration as registered optometrists at such times and places as it may determine.

The examination of applicants for certificates of registration as registered optometrists, who have not practiced as registered optometrists in the State of Illinois, shall include but shall not be limited to psychological optics, practical optics, anatomy and physiology of the eye, pathology of the eye, physiological optics, theoretical optometry, practical optometry, and practical clinical optometry.

The examination of applicants for certificates of registration as registered optometrists, who have practiced optometry for less than five years, may include both practical demonstrations and written and oral tests, and shall embrace the subjects normally taught in schools of optometry approved by the Department of Registration and Education.

If the applicant has had five or more years of approved optometry practice as a principal, the examination shall be by practical demonstration, supplemented by an oral test as to the analysis of findings, and by proof of honorable practice. This examination shall be of such nature as shall, in the judgment of the Department, determine the applicant's qualification to receive the certificate, and shall be deemed equivalent or superior in relative value,

to the examination prescribed for applicants set forth in the preceding paragraphs of this section.

The Department of Registration and Education may prescribe, by rule, additional subjects of examination.

No examination shall be required of applicants who, on the effective date of this Act, are holders of valid existing certificates of registration as registered optometrists issued by the Department of Registration and Education under the act hereby repealed.

Sec. 10. Whenever the provisions of this Act have been complied with, the Department of Registration and Education shall issue an appropriate certificate of registration, to each applicant. Upon proper application and payment of the prescribed fee, additional certificates may be issued to active practitioners who are engaged in the practice of optometry at more than one address. Nothing contained herein, however, shall be construed to require a registered optometrist in active practice to obtain an additional certificate for the purpose of serving on the staff of a hospital or an institution which receives no fees (other than entrance registration fees) for the services rendered by the optometrist and for which the optometrist receives no fees or compensation directly or indirectly for such services rendered; and nothing contained herein shall be construed to require a registered optometrist to obtain an additional certificate for the purpose of rendering necessary optometric services for his patients confined to their homes, hospitals or institutions, or to act in an advisory capacity, with or without remuneration, in any industry, school or institution.

Sec. 11. Every holder of a certificate of registration under this Act shall display such certificate in a conspicuous place in the office

or offices wherein such holder practices optometry, but not in such manner that such certificate may be seen from outside such office or offices; and every such holder shall, whenever requested, exhibit such certificate to any representative of the Department, and shall notify the Department of the address or addresses and of every change thereof, where such holder shall practice optometry.

Every registered optometrist shall keep a record of examinations made and prescriptions issued, which record shall include the names of persons examined and for whom prescriptions were prepared, and shall be signed by the registered optometrist and retained by him in the office in which such professional service was rendered. Such records shall be preserved by the registered optometrist for a period of three years from the date on which such professional service was rendered.

Sec. 12. Every registered optometrist who continues in the active practice of optometry, shall, annually, on or before the 1st day of April, renew his certificate of registration and pay the required renewal fee. Every certificate of registration which has not been renewed during or before the month of April in any year shall expire on the 1st day of May in that year. A registered optometrist whose certificate of registration has expired may have his certificate of registration restored immediately upon payment of all lapsed renewal fees and the required restoration fee; provided, however, that not more than five years have elapsed since the date of expiration.

A registrant whose certificate expired more than five years prior to the application for restoration, may secure a certificate of registration only by passing a satisfactory examination conducted by the Department of Registration and Education to determine his fitness to resume the practice of optometry, and by

paying the original registration fee provided by this Act; provided, however, the period of time which an applicant for restoration shall have spent in the armed services of the United States shall not be included in the calculation of said period of five years.

However, any registered optometrist whose certificate of registration has expired while he has been engaged (1) in federal service in active duty with the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, or the State Militia called into the service or training of the United States of America, or (2) in training or education under the supervision of the United States preliminary to induction into the military service, may have his certificate of registration restored without paying any lapsed renewal fees or restoration fee, if within one year after termination of such service, training or education, other than by dishonorable discharge, he furnishes the Department with an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

Sec. 13. The Department of Registration and Education may either refuse to issue, or may refuse to renew, or may suspend, or may revoke any certificate of registration, and it is the duty of the said Department to so refuse, suspend, or revoke any such certificate of registration, for any one or any combination of the following causes:

(a) Conviction by any Court of competent jurisdiction, either within or without this State, of any violation of any law governing the practice of optometry or of any felony, as shown by a certified copy of the record of such Court of competent jurisdiction;

(b) The obtaining of, or an attempt to obtain, a certificate of registration, or practice in

the profession, or money, or any other thing of value, by fraudulent representation;

(c) Gross Malpractice;

(d) Continued practice by a person knowingly having an infectious or contagious disease;

(e) Advertising, by means of false and deceptive statements or by statements which tend to deceive or defraud;

(f) Advertising, practicing or attempting to practice under a name other than the full name as shown on his or her certificate of registration;

(g) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;

(h) Willful or repeated violations of the rules of the Department of Registration and Education relating to the practice of Optometry;

(i) Association as an optometrist with any person, firm or corporation violating this Act;

(j) Violation of any of the provisions of this Act;

(k) Displaying the name and title of the registrant or other information in lettering larger than four inches in height at street level, or larger than seven inches in height in offices above street level, or illuminating such name, title or other information by colored or neon lights at any time, or displaying any eyeglass or eye sign, whether painted, neon, decalcomanic or otherwise, either in the form of eyes or structure resembling eyes, eyeglass frames, eyeglasses or spectacles, which display or illumination takes place after the expiration of one year from the effective date of this Act;

(l) Placement of the name and title of a registered optometrist in any city, commercial,

telephone or other public directory, or directory in public or office buildings, by display or type that is substantially dissimilar in size, shape, or color to that used for other practitioners of the healing arts in the same directory;

(m) Displaying by any registered optometrist, of any spectacles, eye-glasses, eyeglass or spectacle frames or mountings, goggles, lenses, prisms, spectacle or eye-glass cases, ophthalmic material of any kind, optometric instruments, or optical tools or machinery, or any merchandise, material, or advertising of a commercial nature in office windows or reception rooms or in display cases outside of the office, where the display of such merchandise, material or advertising would be visible from the street;

(n) Displaying the license, diploma or certificate in such manner that it is visible from the street;

(o) Using the title "Doctor" or its abbreviation without further qualifying such title or abbreviation with the word "optometry" or "optometrist";

(p) Use by a registered optometrist of the word "clinic", "infirmary", "hospital", "school", "university", or "institute", in English or any other language in connection with the place where optometry may be practiced or demonstrated; provided, that nothing in this section shall be construed to prevent an optometric clinic, approved by the Examining Committee, from being conducted on a non-profit basis by a school or college of optometry or by an association of registered optometrists;

(q) Continuance of an optometrist in the employ of any person, firm or corporation, or as an assistant to any optometrist or optometrists, directly or indirectly, after his employer or superior has been found guilty of violating or has been enjoined from violating the laws of the State of Illinois relating to the practice

of Optometry, when such employer or superior persists in such violation;

(r) The performance of optometric service in conjunction with a scheme or plan with another person, firm or corporation known to be advertising in a manner contrary to the provisions of this Act or otherwise violating the laws of the State of Illinois concerning the practice of optometry.

The Department may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which if proven would constitute a ground or grounds for refusal, suspension or revocation as hereinbefore set forth, investigate the actions of any person holding or claiming to hold a certificate of registration under this Act. The Department shall, before refusing to issue, suspending, or revoking any certificate, at least ten days prior to the date set for hearing, notify in writing the applicant or holder of such certificate of any charges made and shall afford such accused person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of the same personally to the accused person or by mailing the same by registered mail to the place of practice last theretofore mentioned by the accused person in his last notification to the Department. At the time and place fixed in the notice, the Committee designated by the Director of Registration and Education, as provided in this Act, shall proceed to hear the charges, and both the accused and the complainant shall be accorded ample opportunity to present in person or by counsel, such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto. The Committee may continue such hearing from time to time. If the Committee shall not be sitting at the time and place fixed in the notice or

at the time and place to which such hearing shall be continued, the Department shall continue such hearing for a period not to exceed thirty days.

For the purpose of the administration of this Act, the Department shall maintain as a public record a complete, alphabetical list or index of the persons who have applied for certificates of registration and of the persons holding certificates of registration under this Act, which said list or index shall contain the name, address, location of office or offices and birthday of such person, and the serial number of the certificate of registration issued to him, and such other data as the Department shall deem necessary concerning such person.

Sec. 14. The Department shall have power to subpoena and bring before it any person in this State and to take testimony either orally or by deposition or both, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in civil cases in Courts of this State.

The Director, Assistant Director, Superintendent of Registration and any member of the Committee designated by the Director shall each have power to administer oaths to witnesses at any hearing which the Department is authorized to conduct under this Act, and any other oaths required or authorized to be administered by the Department hereunder.

Sec. 15. Any circuit or superior court or any judge thereof, either in term time or vacation, upon the application of the accused person or complainant or of the Department, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Department in any hearing relative to the application for or refusal, suspension or revocation of any certificate of registration, and the Court or judge

may compel obedience to its or his order by proceedings for contempt.

Sec. 16. The Department, at its expense, shall provide a stenographer to take the testimony and preserve a record of all proceedings at the hearing of any case wherein a certificate is revoked or suspended. The notice of hearing, the complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Committee, and the orders of the Department shall be the record of the proceedings. The Department shall furnish a transcript of such record to any person interested in such hearing upon payment therefor of 70 cents per page for each original transcript and 25 cents per page for each carbon copy thereof ordered with the original. However, the charge for any part of such transcript ordered and paid for previous to the writing of the original record shall be 25 cents per page.

Sec. 17. The Committee shall present to the Director of the Department its written report of its findings and recommendations. A copy of such report shall be served upon the accused person, either personally or by registered mail as provided in this Act for the service of the notice. Within 20 days after such service, said accused person may present to the Department his written motion for a rehearing, which written motion shall specify the particular grounds therefor. If the accused shall order and pay for a transcript of the record as provided in this Act, the time elapsing thereafter and before such transcript is ready for delivery to him shall not be counted as part of such 20 days.

Whenever the Director is satisfied that substantial justice has not been done, he may order a rehearing by the same or another

special Committee. At the expiration of the time specified for filing a motion for a rehearing, the Director shall have the right to take the action recommended by the Committee. Upon the suspension or revocation of his certificate of registration, a registrant shall be required to surrender his certificate of registration to the Department, and upon his failure or refusal so to do, the Department shall have the right to seize the same.

Sec. 18. At any time after the suspension or revocation of any certificate, the Department may restore it to the accused person without examination, upon the written recommendation of the Committee designated by the Director.

Sec. 19. All final administrative decisions of the Department hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act."

Such proceedings for judicial review shall be commenced in the Circuit or Superior Court of the County in which the party applying for review resides; provided, that if such party is not a resident of this State, the venue shall be in Sangamon County.

The Department shall not be required to certify any record or file any answer or otherwise appear hereunder unless the party filing the complaint deposits with the clerk of the court the sum of five cents per hundred words representing costs of such certification. Failure on the part of the plaintiff to make such deposit shall be grounds for dismissal of the action.

Sec. 20. An order of revocation or suspension or a certified copy thereof, over the seal of the Department and purporting to be signed by the Director shall be prima facie proof that

(1) Such signature is the genuine signature of the Director;

(2) Such Director is duly appointed and qualified; and that

(3) The Committee and the members thereof are qualified to act.

Such proof may be rebutted.

Sec. 21. Appeals from all final orders and judgments entered by a circuit or superior court in review of a final administrative decision of the Department, may be taken directly to the Supreme Court by either party to the action and shall be governed by the rules applying to other civil cases appealed to said Supreme Court.

Sec. 22. Upon the payment of the required fee, an applicant who is an optometrist, registered or licensed in another state, territory, country or province, may, without examination, be granted a certificate of registration as a registered optometrist by the Department of Registration and Education, in its discretion, provided:

(a) that the applicant is at least twenty-one years of age, of good moral character and temperate habits, a citizen of the United States, and free of contagious and infectious diseases; and

(b) that the requirements for the registration or licensing of optometrists in such other state, territory, country or province, were, at the date of the registration or license, substantially equal to the requirements then in force in this State, and provided that the same privilege of registration is accorded by said

state, territory, country or province to registered optometrists in the State of Illinois.

Sec. 23. The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration as a registered optometrist is $25.00; the fee for subsequent examination of the same applicant is $15.00.

The fee to be paid by an applicant for a certificate of registration as a registered optometrist is $5.00.

The fee to be paid by an applicant for an examination to determine his preliminary education is $10.00.

The fee to be paid by an applicant for a certificate of registration as a registered optometrist, who is an optometrist registered or licensed under the laws of another state, territory, country or province, is $25.00.

The fee to be paid upon the renewal of a certificate of registration is $3.00.

The fee to be paid for an additional office certificate and for each renewal thereof is $3.00.

The fee to be paid for the restoration of an expired certificate of registration as a registered optometrist is $10.00.

Sec. 24. The practice of optometry by any person who has not been issued a certificate of registration by the Department, or whose certificate of registration has been suspended or revoked, or whose certificate of registration has not been renewed, or the practice, offer to practice, or attempt to practice optometry in violation of this Act by any person, firm or corporation, or the doing, committing, or continuing of any of the acts enumerated in Section 13 of this Act, by any person or persons who is or are subject to the provisions of this Act, whether registered optometrists or not,

is hereby declared to be inimical to the public health and welfare, and to constitute a public nuisance. The Director of Registration and Education or any resident citizen of this State, may in the name of the People of the State of Illinois, through the Attorney General for the State of Illinois, or the State's Attorney of any county in the State of Illinois, apply for an injunction in any court of competent jurisdiction to enjoin any such person, firm or corporation from practicing optometry or from such act or acts in violation of the provisions of this Act; and, upon the filing of a verified petition in such court, the court or any judge thereof, if satisfied by affidavit or otherwise, that such person is or has been practicing optometry without having been issued a certificate of registration or after his certificate of registration has been suspended or revoked, or after his certificate of registration has not been renewed, may issue a temporary injunction, without notice or bond, enjoining the defendant from further practicing optometry. A copy of each verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it be established that said defendant has been, or is practicing optometry without having been issued a certificate of registration or has been or is practicing optometry after his certificate of registration has been suspended or revoked, or after his certificate of registration has not been renewed, or is or has been violating this Act, the court, or any judge thereof, may enter a decree perpetually enjoining said defendant from further practicing optometry. In case of violation of any injunction issued under the provisions of this section, the court, or any judge thereof, may summarily try and punish the offender for contempt of court. Such injunction proceeding shall be in addition to, and not in lieu of, all

penalties and other remedies in this Act provided.

Sec. 25. Whoever practices or offers to practice optometry in this State without being registered for that purpose shall be fined for the first offense not less than $200 nor more than $500, and for each subsequent conviction, shall be punished by a fine of not less than $500 nor more than $1,000, or by imprisonment in the county jail for not less than six months nor more than one year, or by both such fine and imprisonment.

Each of the following constitutes a misdemeanor, punishable, upon conviction, in the same manner as practicing optometry without a certificate of registration as aforesaid:

(a) The obtaining of, or an attempt to obtain, a certificate of registration, by fraudulent misrepresentation;

(b) The making of any wilfully false oath or affirmation whenever an oath or affirmation is required by this Act;

(c) The violation of the provisions of Section 11 of this Act.

All fines and penalties shall inure to the Department of Registration and Education.

Sec. 26. Any person, firm or corporation violating any of the provisions of this Act for which no penalty has been provided above shall, upon conviction, be fined not less than $100 nor more than $500, or be imprisoned in the county jail for not less than ten days and not more than six months, or be both so fined and imprisoned, for each offense.

Sec. 27. The Department of Registration and Education shall keep a record, which shall be open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension and revoca-

tion of certificates of registration. This record shall also contain the name, known place of business and residence, and the date and number of the certificate of registration of every registered optometrist in this State.

Sec. 28. Should any Court of competent jurisdiction hold any section, sub-section, clause, phrase, or provision of this Act to be unconstitutional or invalid for any reason whatsoever, such holding or holdings shall not affect the validity of the remaining provisions of the Act.

Sec. 29. This Act shall be known and cited as "The Illinois Optometric Practice Act."

Sec. 30. An Act entitled "An Act in relation to the regulation of the practice of Optometry", approved April 19, 1919, as amended, is repealed.